

Message Text

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ACTION OPIC-06

INFO OCT-01 EUR-12 EA-06 ISO-00 EB-07 COME-00 TRSE-00

OMB-01 L-02 CIAE-00 INR-07 NSAE-00 /042 W

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FM AMEMBASSY KUALA LUMPUR

TO SECSTATE WASHDC 9310

INFO AMCONSUL HONG KONG

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DEPT PASS OPIC

E.O. 11652: N/A

TAGS: EINV MY

SUBJ: OPIC OPERATIONS IN MALAYSIA

REF: A) KUALA LUMPUR 1350 B) KUALA LUMPUR 1192

1. EMBOFFS, ACCOMPANIED BY HUNT AND SEDLAR, CALLED ON VICTOR DE BRUYNE, DEPUTY DIRECTOR GENERAL, MINISTRY OF TRADE AND INDUSTRY, ON MARCH 17 TO DISCUSS OPIC OPERATIONS IN MALAYSIA.

2. SEVERAL SIGNIFICANT POINTS EMERGED FROM CONVERSATION. DE BRUYNE CONFIRMED REPORT REFTEL B THAT ONE OF MAIN GOM CONCERNS REGARDING INVESTMENT GUARANTEES IS FORTHCOMING NEGOTIATIONS WITH BRITISH WHICH WILL IN ALL LIKELIHOOD RESULT IN BILATERAL AGREEMENT. DE BRUYNE EXPRESSED GENERAL CONCERN THAT BECAUSE INVESTMENTS FROM HONG KONG WILL FALL UNDER PROPOSED AGREEMENT, ANY ACTIONS TAKEN NOW BY MALAYSIANS IN CASES SUCH AS MOTOROLA OR DOW MIGHT SET PRECEDENT DAMAGING TO MALAYSIA. HE ALSO EXPRESSED CONCERN THAT GRANTING OF APPROVAL IN CASES SUCH AS THESE, I.E., SUBSIDIARIES OF U.S. COMPANIES LOCATED IN HONG KONG INVESTING IN MALAYSIA, MIGHT

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CAUSE DIFFICULTIES WITH GERMANY AND THE NETHERLANDS BE-

CAUSE OF DIFFERENT PRACTICES FOLLOWED TOWARDS THEIR FIRMS AS A RESULT OF BILATERAL AGREEMENTS WITH THOSE COUNTRIES.

3. REGARDING LEGAL CONSIDERATIONS DE BRUYNE RESTATED ARGUMENT THAT ACCORDING TO MALAYSIAN COMPANIES ACT, COMPANIES INCORPORATED IN HONG KONG ARE HONG KONG, NOT U.S. FIRMS. (THIS PROPOSITION PROBABLY UNSUPPORTED BY COMPANIES ACT.)

4. DE BRUYNE ALSO RAISED, IN STRONGER FASHION, NECESSITY TO RENEGOTIATE OPIC AGREEMENT STATING THAT EXISTING AGREEMENT CONSISTS OF EXCHANGE OF LETTERS AND IS NOT "PROPER AGREEMENT." HE FELT IT NECESSARY TO HAVE MORE SPECIFIC DEFINITION OF WHAT IS OR IS NOT U.S. FIRM IN ORDER FOR GOM TO DEAL WITH SUCH TROUBLING CASES.

5. AMONG POINTS MADE IN RESPONSE TO DE BRUYNE'S REMARKS WERE

A) CHANNELLING OF FOREIGN INVESTMENT THROUGH THIRD COUNTRY HOLDING COMPANIES DOES NOT ADVERSELY AFFECT HOST COUNTRY

B) GOM SHOULD AVOID DISINCENTIVE OF LIMITING ABILITY OF INVESTORS TO CHANNEL INVESTMENT TO GREATEST ADVANTAGE

C) BILATERAL AGREEMENT AND PROJECT APPROVALS PROVIDE CLEAR AND FLEXIBLE MEANS FOR FIXING PROCEDURAL RELATIONSHIP BETWEEN THE GOVERNMENTS SUBSTANTIALLY CONCERNED (THE HOST GOVERNMENT AND THE INSURER GOVERNMENT), WHICH HELPS AVOID COMPLEXITIES AND UNCERTAINTIES AS TO WHICH GOVERNMENT HAS APPROPRIATE STANDING TO REPRESENT A FOREIGN CORPORATION'S INTERESTS.

6. DE BRUYNE'S REACTION SHED NO LIGHT ON HOW THESE CASES "HURT" MALAYSIA, AND REVEALED HIGH DEGREE OF FIXATION WITH NOTION THAT EXISTING BILATERAL AGREEMENT DOES NOT SPELL OUT SIGNIFICANT MATTERS. OPIC REP'S SPECULATION FOLLOWING MEETING IS THAT DE BRUYNE'S EXPERIENCE IN NEGOTIATION OF ONE OR MORE AGREEMENTS WITH EUROPEANS HAS INFLUENCED HIS NOTION OF WHAT IS LIMITED OFFICIAL USE

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"PROPER" IN THIS CONTEXT. OUR OBJECTIVE WILL BE TO TRY TO AVOID RENEGOTIATION BY STRESSING BENEFITS TO GOM OF SIMPLE AND FLEXIBLE PROVISIONS FOR PROJECT APPROVALS UNDER EXISTING AGREEMENT.

7. HUNT AND COMAT PLAN TO MEET WITH REPRESENTATIVE FROM ATTORNEY GENERAL'S OFFICE TO EXPLORE LEGAL ISSUES RAISED BY DE BRUYNE. WE WILL ALSO OBTAIN COPIES OF

OTHER AGREEMENTS GOM HAS ENTERED INTO SO THAT COM-
PARISONS CAN BE MADE. AFTER THIS INFORMATION OBTAINED
AND ANALYZED, HUNT AND EMBOFFS PLAN TO HAVE SECOND
MEETING WITH DE BRUYNE TO DISCUSS THESE QUESTIONS IN
GREATER DETAIL.
UNDERHILL

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